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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 8 and 13**

**[FAR Case 2015-015; Docket No. 2015-0015; Sequence No. 1]**

**RIN 9000-AM89**

**Federal Acquisition Regulation: Strategic Sourcing  
Documentation**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 that provides that the contract file shall contain certain documentation if the Federal Government makes a purchase of supplies and services offered under the Federal Strategic Sourcing Initiative (FSSI), but the FSSI is not used.

**DATES:** Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days after date of publication in the Federal Register]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments in response to FAR case 2015-015 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015-015". Select the link "Comment Now" that corresponds with "FAR Case 2015-015." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015-015" on your attached document(s).

- Mail: General Services Administration, Regulatory Secretariat Division , ATTN: Ms. Flowers, 1800 F Street, NW, 2<sup>nd</sup> floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR case 2015-015" in all correspondence related to this case. Comments received will generally be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment, please check [www.regulations.gov](http://www.regulations.gov), approximately two to three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail.)

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949. For information pertaining to

status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755. Please cite "FAR Case 2015-015."

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 836 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (NDAA) (Pub. L. 113-291) was enacted on December 19, 2014. This provision is part of subtitle D, Federal Information Technology Acquisition Reform, of title VIII of the NDAA. It established that when the Federal Government makes a purchase of supplies or services offered under the Federal Strategic Sourcing Initiative (FSSI), but the FSSI is not used, the contract file for the purchase shall include a brief analysis of the comparative value, including price and nonprice factors, between the supplies and services offered under the FSSI and those offered under the source(s) to be used for the purchase. The goals and benefits of the FSSI Program as taken directly from the FSSI strategic sourcing website ([www.strategicsourcing.gov](http://www.strategicsourcing.gov)) are—

Strategic sourcing is the structured and collaborative process of critically analyzing an organization's spending patterns to better leverage its purchasing power, reduce

costs, and improve overall performance. The primary goals of FSSI are to—

- Strategically source across federal agencies;
- Establish mechanisms to increase total cost savings, value, and socioeconomic participation;
- Collaborate with industry to develop optimal solutions;
- Share best practices; and
- Create a strategic sourcing community of practice.

Strategic Sourcing drives both dollar savings and process improvements. The Federal Government, suppliers and ultimately the U.S. taxpayers benefit when government can better articulate its requirements and provide committed purchase volumes, and in return, industry suppliers can provide better pricing and more valuable solutions. Specific benefits of Strategic Sourcing include—

- Meet OMB's goal for cross-government participation;
- Assist with socioeconomic goals;
- Collect and analyze data;
- Identify trends;
- Re-engineer high cost business processes;
- Replicate cost-saving business processes;
- Share lessons learned and best practices;

- Realize cost efficiencies;
- Streamline procurement process; and
- Drive additional discounts.

By ensuring consideration of strategically sourced vehicles, the proposed documentation requirement will raise the visibility of these solutions, promote their use, and help to better leverage the Government's buying power. This proposed rule complements other efforts and strategies being developed under the Category Management Initiative, which builds on the success of strategic sourcing by managing entire categories of common purchases across the Government and utilizing teams of experts to manage those specific categories to drive down total cost and improve performance. See Transforming the Federal Marketplace: Simplifying Federal Procurement to Drive Performance, Drive Innovation, and Increase Savings (December 4, 2014) available at <https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>.

## **II. Proposed FAR changes.**

The purpose of the proposed FAR changes is to update FAR 8.004 to add the requirements established by section

836. Additionally, FAR 13.301 is updated to clarify that for micro-purchases made using the governmentwide purchase card, purchase card holders shall follow the documentation requirements in Appendix B of OMB Circular A-123 (available at

[https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123\\_appendix\\_b.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a123/a123_appendix_b.pdf)), which prescribes management guidance on the use of purchase cards.

This new FAR rulemaking requires contracting officers when purchasing supplies or services that are offered under the FSSI, but the FSSI is not used, to document the contract file to include a brief analysis of the comparative value, including price and nonprice factors, between the supplies and services offered under the FSSI and those offered under the source(s) to be used for the purchase.

**III. Applicability to Contracts for Amounts not greater than the Simplified Acquisition Threshold (SAT), Commercial Items, and Commercially Available Off-the-Shelf (COTS) items.**

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. 41 U.S.C. 1906 requires that the FAR include a list of provisions of law that are inapplicable to the acquisition of commercial items (other than the acquisition

of commercially available off-the-shelf (COTS) items). 41  
U.S.C. 1907 requires that the FAR include a list of  
provisions of law that are inapplicable to the acquisition  
of COTS items. It is anticipated that at the time of the  
final rule the FAR Council will approve these  
determinations.

#### **IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct  
agencies to assess all costs and benefits of available  
regulatory alternatives and, if regulation is necessary, to  
select regulatory approaches that maximize net benefits  
(including potential economic, environmental, public health  
and safety effects, distributive impacts, and equity).  
E.O. 13563 emphasizes the importance of quantifying both  
costs and benefits, of reducing costs, of harmonizing  
rules, and of promoting flexibility. This is a significant  
regulatory action and, therefore, was subject to Office of  
Information and Regulatory Affairs (OIRA) review under  
Section 6(b) of E.O. 12866, Regulatory Planning and Review,  
dated September 30, 1993. This proposed rule is not a  
major rule under 5 U.S.C. 804.

#### **V. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to  
have a significant economic impact on a substantial number

of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed rule only affects the internal operating procedures of the Government.

However, an Initial Regulatory Flexibility Analysis (IRFA) was performed and is summarized as follows:

This rule implements section 836 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, which provides that the contract file shall contain certain documentation if the Federal Government makes a purchase of supplies and services offered under the Federal Strategic Sourcing Initiative (FSSI), but the FSSI is not used.

The goal of the rule is to have contracting officers consider use of the GSA Federal Strategic Sourcing Initiative (FSSI) when purchasing items that are available through FSSI.

According to the Federal Procurement Data System, in Fiscal Year 2014, the Federal Government made approximately 170,403 contract awards (not including modifications and orders), of which approximately 85,624 (50.25 percent) were awarded to about 43,545 unique small business entities. The rule requires action by contracting officers when purchasing items available through FSSI and will not directly affect any small entities. It specifically requires the contracting officer to place certain documentation in the contract file if the Federal Government makes a purchase of supplies and services offered under the Federal Strategic Sourcing Initiative (FSSI), but the FSSI is not used. The rule could indirectly affect small businesses that offer supplies or services under the FSSI as the rule will require contracting officers to consider FSSI vendors when they may not have done so in the past, and this could lead to more sales for those small businesses. There are currently 137 entities awarded under the FSSI, of which 78 (57 percent) are small entities. The required consideration of FSSI offerings does not directly have a negative effect on entities not awarded an FSSI contract, but the required contracting officer consideration and documentation requirement could indirectly lead to more purchases going to those vendors involved in the FSSI.

An explicit goal of Federal strategic sourcing is to maintain and/or enhance socio-economic goals. Partnering



with small businesses during key stages of the strategic sourcing process will enable the FSSI to meet or exceed socio-economic goals. As part of the FSSI process, current spending with small business is baselined for each initiative to gain an understanding of how much is being spent. Then sourcing strategies are developed that expand the business done with targeted groups against that baseline, quantify the expected changes, and compare this with actual results as required by OMB guidance on strategic sourcing. Each participating agency will continue to be responsible for achieving its socio-economic goals and will need to evaluate the impact of FSSI sourcing recommendations.

There is no reporting required by Government contractors, all action on the rule is internal to the Government.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No viable alternatives were determined at this rulemaking stage.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-015), in correspondence.

## **VI. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

**List of Subjects in 48 CFR Parts 8 and 13**

Government procurement.

Dated: June 14, 2016.

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA and NASA propose amending 48 CFR parts 8 and 13 as set forth below:

1. The authority citation for 48 CFR parts 8 and 13 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 8-REQUIRED SOURCES OF SUPPLIES AND SERVICES**

2. Amend section 8.004 by-

- a. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(1)(i) and (ii), respectively;
- b. Redesignating the introductory paragraph as paragraph (a)(1);
- c. Removing from the newly designated paragraph (a)(1) "paragraph (a)" and "paragraph (b)" and adding "paragraph (a)(1)" and "paragraph (a)(2)" in their places, respectively;
- d. Removing from the newly redesignated paragraph (a)(1)(ii) "paragraph (a)(1)" and adding "paragraph (a)(1)(i)" in its place;
- e. Redesignating paragraph (b) as paragraph (a)(2); and
- f. Adding new paragraph (b).

The addition reads as follows:

**8.004 Use of other sources.**

\* \* \* \* \*

(b) Documentation requirements relating to the Federal Strategic Sourcing Initiative (FSSI). When purchasing supplies or services that are offered under the FSSI, but the FSSI is not used, the contract file shall be documented to include a brief analysis of the comparative value, including price and nonprice factors, between the supplies and services offered under the FSSI and those offered under the source(s) to be used for the purchase (section 836 of Pub. L. 113-291).

#### **PART 13-SIMPLIFIED ACQUISITION PROCEDURES**

3. Amend section 13.301 by revising paragraph (b) to read as follows:

##### **13.301 Governmentwide commercial purchase card.**

\* \* \* \* \*

(b)(1) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) (available at <http://tfm.fiscal.treasury.gov/v1/p4/c450.html>, the Office of Management and Budget's Circular A-123, Appendix B (available at <https://www.whitehouse.gov/sites/default/files/omb/assets/o>

mb/circulars/a123/a123\_appendix\_b.pdf), and that are consistent with the terms and conditions of the current GSA credit card contract.

(2) Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor. See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

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**Billing Code: 6820-EP**

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